

## REMARKS

Applicant is in receipt of the Final Office Action mailed August 26, 2004. Claims 1 – 37 remain pending in the application. Reconsideration is respectfully requested in light of the following remarks.

### Section 103(a) Rejection:

The Office Action rejected claims 1-3, 5, 6, 8, 9, 11, 12, 14-16, 18-22, 24-26, 28-31, 33, 34, 36 and 37 under 35 U.S.C. § 103(a) as being unpatentable over Shelton et al. (U.S. Patent 6,418,471) (hereinafter “Shelton”) in view of Eichstaedt et al. (U.S. Patent 6,662,230) (hereinafter “Eichstaedt”). Applicant respectfully traverses this rejection for at least the following reasons.

**Shelton in view of Eichstaedt does not teach or suggest sending a request for information to the first computer, wherein the information comprises a first Internet address and a first time value corresponding to the first computer, as recited in claim 1.** The Examiner refers to col. 6, lines 7-23 of Shelton in regard to these limitations of claim 1. This portion of Shelton describes the operation of the WTS server 144, which is part of Shelton’s WTS (Web Tracking and Synching) mechanism. The WTS server in Shelton records browser activities from web browsers 114 on terminals 104. However, the WTS mechanism of Shelton *does not request* any information from terminals 104, let alone an Internet address and/or a time value. Neither the passage at col. 6, lines 7-23, nor any other portion of Shelton describes the WTS mechanism requesting information from any of the terminals. Note that the information stored in session table 145 (Fig. 6) is not requested from the terminals 104. Shelton only describes the WTS mechanism as tracking browser activity that it receives from the terminals. Shelton does not teach that the WTS mechanism ever requests any information from the terminals or browsers.

The Examiner argues that Eichstaedt teaches sending a request for a first time value and cites column 7, lines 23-63 where Eichstaedt describes his method for checking client request frequencies. However, the Examiner's interpretation of Eichstaedt is clearly incorrect. Eichstaedt teaches a method implemented in a server which automatically recognizes when a client computer is making requests too frequently or is accessing too much of the server computer's resources (col. 3, lines 46 – 49). Specifically, Eichstaedt obtains an IP address or other client identifier and determines if the client is on a deny list, in which case the client is refused (col. 7, lines 23 – 31). Eichstaedt further teaches that the server performs frequency checks, wherein the number of requests the client identifier has made within a predefined *time period*  $t_1$ , as determined from a log file, is compared with a predefined maximum number  $x_1$ . Furthermore, Eichstaedt teaches that a system administrator chooses values for  $t_1$  and  $x_1$ . If the client identifier has more than  $x_1$  requests, the client is added to the deny list. If the client identifier passes a last frequency check, the requested data object is sent (col. 7, lines 32 – 63). Thus, the time value  $t$  cited by the Examiner is not requested from a first computer, as recited in claim 1, but instead is set by a system administrator.

In response to the above argument, the Examiner, in the Response to Arguments section, again cites column 7, lines 23-31 of Eichstaedt that teaches “in step 47, the GET message and IP address or other client identifier are obtained.” The Examiner apparently interprets this to including requesting a time value. However, it is clear that Eichstaedt is referring obtaining an IP address or some other value that identifies the client. A time value does not identify a client and thus Eichstaedt's “other client identifier” cannot correctly be interpreted to include requesting time values. There is clearly no teaching in Eichstaedt of sending a request for information to the first computer, wherein the information comprises a first Internet address and a first time value corresponding to the first computer.

In the Response to Arguments section, the Examiner also notes that when reviewing a prior art reference any reasonable inferences that are logically drawn from the teaching of the reference may also be evaluated in formulated a rejection. However,

it is not reasonable to infer requesting a time value from a first computer system when Eichstaedt **explicitly teaches** determining time values from a log file. Furthermore, it would not make sense for Eichstaedt to request his time values from a computer system accessing the server because the entire purpose in Eichstaedt is for the server to determine if a client computer accesses the server too frequently during a time period determined *by the server*. Clearly the time value cannot be requested by the server from the client computers for Eichstaedt's method to function properly. Thus, the Examiner's remarks regarding reasonable inferences do not apply to the Examiner's rejection of claim 1. The Examiner's interpretation of Eichstaedt is clearly based on hindsight knowledge of Applicant's disclosure. A similar argument applies in regard to independent claims 9, 12 and 15.

**In further regard to claim 1, Shelton in view of Eichstaedt does not teach or suggest determining whether a matching record for the first Internet address and the first time value exists in the database, and identifying the first computer as a distinct user if the matching record does not exist in the database, as recited in claim 1.** The Examiner refers to col. 7, lines 23 – 63, of Eichstaedt in regard to these limitations of claim 1. As discussed above, Eichstaedt teaches a method implemented in a server which automatically recognizes when a client computer is making requests too frequently or is accessing too much of the server computer's resources. (col. 3, lines 46 – 49). Thus, Eichstaedt teaches comparing *a number of requests made within a time period* to a predefined maximum number and **does not teach** determining if a time value contained in a matching record exists in a database, as recited in claim 1. Furthermore, Eichstaedt teaches performing a series of frequency checks if a client identifier is not found in a deny list, but **does not teach** identifying the first computer as a distinct user if the matching record does not exist in the database. A similar argument applies in regard to independent claims 9, 15, 16, 19, 20, 26, 29, 30, 34 and 37.

In response to Applicant's arguments, the Examiner, in the Response to Argument's section, cites Figure 3 and a related passage where Eichstaedt discusses Figure 3. The Examiner incorrectly contends that Eichstaedt teaches comparing a time

period along with the number of requests with values stored in a database. However, contrary to the Examiner's assertion, Eichstaedt very clearly teaches:

"In step 56, the number of requests the client identifier [e.g. IP address] has made within a predetermined time period  $t_1$  is determined from the log file. Time period  $t_1$  may be any time period, from milliseconds to days, weeks, or even years. This *number of requests is compared with a predefined maximum number  $x_1$* . Values for  $t_1$  and  $x_1$  are chosen by the system administrator..." (emphasis added).

Eichstaedt does not mention, either in the cited passage or elsewhere, comparing a time period along with the number of requests with values stored in a database as argued by the Examiner. Instead, as shown above, Eichstaedt teaches comparing the number of requests made during a time period with a predefined maximum number of requests. Furthermore, Eichstaedt's teachings have absolutely nothing to do with determining whether a matching record for the first Internet address and the first time value exists in the database, and identifying the first computer as a distinct user if the matching record does not exist in the database, as recited in Applicant's claim 1. To the contrary, Eichstaedt's teachings pertain to recognizing when a client computer is making requests too frequently or is accessing too much of the server computer's resources.

**Moreover, the Examiner has not provided a proper motivation to modify Shelton according to Eichstaedt.** Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so in the prior art. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). The question is whether there is something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination. *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 488 (Fed. Cir. 1984). The reason given by the Examiner to combine the references is that "it would be more efficient for a system to update and log users interactions with a web sites which could aid in the determination in trends or stop invalid users (robots) from accessing site that would require human interaction for payment of services." Applying the method for automatically limiting access of a client computer to data objects taught by Eichstaedt to the web site in Shelton would only serve to filter out browser

interactions from robots and prevent the determination of trends. Filtering out browser interactions would defeat the intended purpose of Shelton to record all browser activity to the web site. If a proposed modification would render the prior art feature unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900 (Fed. Cir. 1984). Therefore, the combination of Shelton and Eichstaedt is clearly improper.

In the Response to Arguments section, the Examiner argues, “Shelton does not teach recording all browser activity.” The Examiner has misunderstood Applicants’ argument. Eichstaedt teaches a method to limit a computer’s access to a web site based on that computer’s access frequency and/or total amount of data downloaded. Shelton teaches a method for recording and reproducing browser activity. Shelton states as one of the objectives of his invention: “to record *the detailed browsing activities* of an individual browser” (column 2, lines 33-37). Shelton also states, as another object of his invention, “the ability to store *each* URL request and *each* piece of data entered into an HTML form ...” (column 2, lines 38-42). Thus, modifying Shelton to automatically deny access to the web site based on access frequency or total data accessed would render Shelton’s invention unsatisfactory for its intended purpose, e.g. to record detailed browsing activities and to store each URL request and each piece of data entered.

Furthermore, Applicant notes that Shelton’s teachings pertain to recording and reproducing *client-side browser activity* whereas Eichstaedt’s teachings pertain to monitoring access frequency and/or total amount of data downloaded *at a server*. Even if combined, the systems of Shelton and Eichstaedt would still operate independently of one another. **Moreover, neither reference has anything to do with determining a distinct user according to whether an Internet address and time value match a record in a database, as recited in claim 1.**

Regarding claim 3, Shelton in view of Eichstaedt does not teach or suggest wherein the time value is associated with a user-defined event and wherein the user-defined event is a launch of a web browser software on said first computer system. The

Examiner cites column 10, lines 16-42 and column 10, line 61-column 11, line 7 where Shelton describes the contents of session table 145. However, the cited passages do not mention a time value associated with a user-defined event, wherein the user-defined event is a launch of a web browser. Shelton teaches that a session list in session table 145 may contain a StartTime and a StopTime respectively indicating the starting and stopping of a session. However, the StartTime for one of Shelton's sessions does not correspond to the launching of a web browser, as the Examiner contends. Instead, Shelton teaches, "[a] session is created when a browser first hits web site 134" (Shelton, column 9, line 67 – column 10, line 1). The Examiner has not relied upon Eichstaedt for the rejection of claim 2 and Eichstaedt fails to overcome any deficiency of Shelton regarding a time value associated with a user-defined event, wherein the user-defined event is a launch of a web browser. A similar argument applies in regard to claims 22 and 31.

The Office Action rejected claims 4, 7, 10, 13, 17, 23, 27, 32 and 35 under 35 U.S.C. § 103(a) as being unpatentable over Shelton et al. (U.S. Patent 6,418,471) (hereinafter "Shelton") in view of Eichstaedt et al. (U.S. Patent 6,662,230) (hereinafter "Eichstaedt") in further view of Bodnar et al. (U.S. Patent 6,295,541) (hereinafter Bodnar). Applicant respectfully traverses this rejection for at least the following reasons.

Regarding claim 7, Shelton in view of Eichstaedt in further view of Bodnar does not teach or suggest identifying the first computer user as a distinct computer user only if the matching record does not exist in the database or if the timestamp for the matching record is older than a predetermined maximum time. The Examiner admits that Shelton and Eichstaedt fail to teach the limitations of claim 7. The Examiner cites Bodnar, column 27, line 40-column 28, line 31. However the cited passage describes how Bodnar determines and deals with clock drift in his record synchronization system. Determining and handling clock drift and error in a record synchronization system does not teach or suggest identifying a computer user as a distinct computer user only if a matching record does not exist in a database or if the timestamp for the matching record is older than a

predetermined maximum time. The only maximum time mentioned by Bodnar, in the cited passage or elsewhere, is the maximum presumed range a clock may have drifted since a last synchronization (Bodnar, column 27, lines 40-43).

Applicant also asserts that numerous ones of the dependent claims recited further distinctions over the cited art. However, since the independent claims have been shown to be patentably distinct, a further discussion of the dependent claims is not necessary at this time.

## CONCLUSION

Applicants submit the application is in condition for allowance, and notice to that effect is respectfully requested.

If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above referenced application from becoming abandoned, Applicant hereby petitions for such extension. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5596-00200/RCK.

Also enclosed herewith are the following items:

- ☒ Return Receipt Postcard
- ☒ Petition for Extension of Time
- ☒ Notice of Appeal
- ☐ Fee Authorization Form authorizing a deposit account debit in the amount of \$  
for fees (        ).
- ☐ Other:

Respectfully submitted,



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